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5 Attorneys for Defendants  
AMTECK OF KENTUCKY, INC. and THE HASKELL COMPANY  
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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 REYNALDO SALINAS, et al., ) CASE NO. C 08-01463 PJH  
12 )  
Plaintiffs, )  
13 vs. ) Date: July 23, 2008  
Time: 9:00 a.m.  
14 AMTECK OF TEXAS, et al., ) Courtroom: 3  
15 Defendants. )  
16 \_\_\_\_\_ )  
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19 ATTORNEY DECLARATION SUPPORTING DEFENDANTS AMTECK OF  
KENTUCKY, INC. and THE HASKELL COMPANY'S MOTION FOR ASSESSMENT  
20 OF COSTS AND FEES AGAINST PLAINTIFFS IN THE AMOUNT OF \$77,847.66 AND  
FOR STAY OR DISMISSAL OF PROCEEDINGS PENDING PAYMENT  
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1 I, JOHN P. COTTER, declare:

2 1. I am an attorney at law licensed to practice in the State of California and am  
3 partner with Diepenbrock & Cotter, LLP, counsel of record for defendants Amteck of  
4 Kentucky, Inc. and the Haskell Company (hereinafter, "defendants") in the above-  
5 referenced matter. I have personal knowledge of the matters set forth in this declaration  
6 unless otherwise stated and could competently testify thereto if called as a witness.

7 2. Attached to the memorandum accompanying this motion as Exhibit "1" is a  
8 true and correct copy of the complaint and order re *pro hac vice* status filed in the original  
9 state action entitled Reynaldo Salinas, et al. vs. Amteck, Superior Court, State of California,  
10 Napa County, Case No. 26-35179.

11 3. Attached to the memorandum accompanying this motion as Exhibit "2" is a  
12 true and correct copy (except as qualified in the next sentence) of a motion and supporting  
13 exhibits requesting the imposition of discovery sanctions, including the appointment of a  
14 discovery referee and protective order, that my office filed in the original state action,  
15 Reynaldo Salinas, et al. vs. Amteck, Superior Court, State of California, Napa County, Case  
16 No. 26-35179. I have omitted the word concordances to the deposition exhibits to this  
17 document in an effort to conserve paper. I am informed and believe that plaintiffs never  
18 filed an opposition to this motion. The motion attached as Exhibit "2" was not ruled upon  
19 by the Napa County Superior Court because plaintiffs' counsel dismissed the action without  
20 prejudice shortly before the hearing.

21 4. Attached to the memorandum accompanying this motion as Exhibit "3" is a  
22 true and correct copy of the joinder and declaration served by William Buranich in the  
23 Reynaldo Salinas, et al. vs. Amteck, Superior Court, State of California, Napa County, Case  
24 No. 26-35179.

25 5. Attached to the memorandum accompanying this motion as Exhibit "4" is a  
26 true and correct copy of plaintiffs counsel's October 29, 2007 letter received by my office.

1 The letter enclosed a dismissal of plaintiffs' complaint without prejudice in Reynaldo  
2 Salinas, et al. vs. Amteck, Superior Court, State of California, Napa County, Case No. 26-  
3 35179.

4 6. Attached to the memorandum accompanying this motion as Exhibit "5" is a  
5 true and correct copy of a November 1, 2007 letter sent by my office to plaintiffs' counsel  
6 in reply to Mr. Ball's dismissal of the Napa County Superior Court action.

7 7. Attached to the memorandum accompanying this motion as Exhibit "6" is a  
8 true and correct copy of defendants' memorandum of costs for \$7,496.26 filed in Reynaldo  
9 Salinas, et al. vs. Amteck, Superior Court, State of California, Napa County, Case No. 26-  
10 35179. Plaintiffs' filed an untimely motion to tax costs which was not considered by the  
11 court.

12 8. Attached to the memorandum accompanying this motion as Exhibit "7" is a  
13 true and correct copy the court's judgment my office received which enters judgment on  
14 defendants' cost bill in the amount of \$7,496.26. To date, neither plaintiffs or plaintiffs'  
15 counsel has paid the judgment.

16 9. Attached to the memorandum accompanying this motion as Exhibit "8" is a  
17 true and correct copy of the plaintiffs' complaint in this action (as downloaded from  
18 PACER) which was originally filed in Texas state court. The document indicates the  
19 complaint was filed November 14, 2007.

20 10. Defendants removed this action from Texas state court on the basis of  
21 diversity jurisdiction to the United States District Court, Southern District of Texas,  
22 McAllen Division. To accomplish removal, defendants demonstrated to the court that  
23 Amteck of Texas was not a proper party. After removal, this matter was transferred to this  
24 court on defendants' motion to transfer. The court is requested to take judicial notice of  
25 these facts which are supported by the files and records of this action in the United States  
26 District Court, Southern District of Texas, McAllen Division, Case No. 7:08-cv-00003.

1 The files and records of this matter while venued in the Southern District of Texas can be  
2 viewed on the PACER system.

3 11. Attached to the memorandum accompanying this motion as Exhibit "9" is a  
4 true and correct copy of Amteck of Kentucky's removal notice.

5 12. Attached to the memorandum accompanying this motion as Exhibit "10" is a  
6 true and correct copy of Amteck of Kentucky's motion to transfer.

7 13. Attached to the memorandum accompanying this motion as Exhibit "11" is a  
8 true and correct copy of Haskell Company's removal notice.

9 14. Attached to the memorandum accompanying this motion as Exhibit "12" is a  
10 true and correct copy of Haskell Company's motion to transfer.

11 15. Attached to the memorandum accompanying this motion as Exhibit "13" is a  
12 true and correct copy of Amteck of Texas' removal notice and assertion that it had been  
13 fraudulently joined to this action.

14 16. Attached to the memorandum accompanying this motion as Exhibit "14" is a  
15 true and correct copy of Amteck of Texas motion to dismiss.

16 17. Attached to the memorandum accompanying this motion as Exhibit "15" is a  
17 true and correct copy of Plaintiffs' Notice of Dismissal of Amteck of Texas without  
18 Prejudice.

19 18. The attachments and exhibits of the original filed documents attached as  
20 Exhibits "9" through "15" have not been attached or included in an effort to reduce paper  
21 use. Upon request, defendants will provide these documents. The documents can be  
22 viewed on the PACER system, United States District Court, Southern District of Texas,  
23 McAllen Division, Case No. 7:08-cv-00003.

24 19. Attached to the memorandum accompanying this motion as Exhibit "16" is a  
25 true and correct copy of the order transferring this matter to the Northern District of  
26 California.

20. The complaints contained in Exhibits "1" and "8" demonstrate that California High Reach & Equipment Rental, Inc. was a defendant in the Napa County Superior Court action and that California High Reach & Equipment Rental, Inc. is not a defendant in this action. In a telephone call on June 11, 2008, attorneys for plaintiffs indicated (to me and others) that plaintiffs are considering naming California High Reach & Equipment Rental, Inc. in this action. Additionally, an attorney in my office has been informed by other counsel that plaintiffs' counsel has advised them that bringing California High Reach & Equipment Rental, Inc. back into the case is intended to "destroy" diversity, thus, allowing the matter to return to Napa County. Online records for the California Secretary of State as of June 12, 2008 indicate California High Reach Equipment Rental, Inc. is California corporation.

21. Defendants incurred \$49,623.50 in attorneys fees and costs defending the prior Napa County Superior Court action. The figure includes \$35,373.00 in attorney's fees, \$6,754.24 in costs and the unpaid judgment of \$7,496.26.

22. Defendants incurred \$28,224.16 in attorneys fees and costs removing and transferring this case to the Northern District. This figure includes \$27,363.17 in attorney fees and \$860.99 in costs. Attorneys fees incurred in Texas were substantial as Texas counsel inherited a very large file and was required to contact numerous witnesses on short notice.

I declare under penalty of perjury that the foregoing is true and correct except as to matters stated on information and belief and as to those matters, I believe them to be true.

Executed on June 12, 2008 at Sacramento, California.

*/s/ John P. Cotter*

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JOHN P. COTTER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and forgoing document was sent via ELECTRONIC SERVICE (through ECF website) or UNITED PARCEL SERVICE to the counsel listed below on June 12, 2008:

Wesley Todd Ball  
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Farrar & Ball LLP  
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F: (713) 221-8301  
michael@fbtrial.com

Counsel for Plaintiffs  
(By UPS only - not ECF registered for this case - copy of General Order 45 included)

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Counsel for Plaintiffs  
(Courtesy copy by UPS only - not ECF registered for this case - copy of General Order 45 included)

Ronald D. Digesti, Esq.  
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Counsel for U.S. Trades  
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2 Dryden Margolis Schimaneck & Wertz  
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8 Counsel for Snorkel International, Inc.  
9 (Served through ECF system)

10 I declare under penalty of perjury that the forgoing is true and correct.

11 */s/ John P. Cotter*

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13 JOHN P. COTTER  
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